

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

EVERETT T ASBY
Claimant

LIFE CONNECTION LLC
Employer

APPEAL NO. 14A-UI-04541-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/06/14
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated April 21, 2014, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on August 27, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing. Angela-Moon Chaplin Lins-Eich participated in the hearing on behalf of the employer. Exhibits One through Ten and Twelve through Fifteen were admitted into evidence.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time as a therapist for the employer from September 23, 2011 to April 2, 2013. He was informed and understood that under the employer's work rules; general discussions, reprimands, disciplinary actions, performance evaluations, improvement plans, development plans, wage or salary disclosures, or any other discussions involving supervisors and employees were confidential and were not be disclosed to third parties.

The claimant had received a written warning July 24, 2013 for disrespectful demeanor during staff meetings. He was verbally warned on December 29, 2013 for not updating client paperwork. He was verbally warned on March 25, 2014.

During a meeting on March 24, 2014 the employer's Chief Executive Officer announced that the employer would be expanding services to another area by merging with another provider. She told those attending the meeting not to disclose the information to external parties. She did not announce the name of the provider to the employees in the staff meeting.

Within a few days, the provider that the employer was merging with, Horizons, announced to its employees that it would be merging with the employer.

One of the employees of Horizons, Michelle Janko, was a good friend of the claimant. After Horizons announced the merger with the employer, Janko sent a text message to the claimant notifying him about the merger and expressed concern about the transition. The claimant responded that she should stay optimistic and it could be better than she thought. He did not disclose any confidential information to Janko and, because he was not encouraging to Janko, did not do anything to harm the employer's interest.

The employer received information from a manager at Horizons that the claimant had contacted Janko before the merger was announced and disclosed that Horizons was merging with the employer. As a result of this, and the claimant's prior discipline, the employer discharged the claimant on April 2, 2014.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. Mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not misconduct within the meaning of the statute. 871 IAC 24.32(1).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Iowa Code § 96.6-2; Cosper v. Iowa Department of Job Service, 321 N.W.2d 6, 11 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

The unemployment insurance rules provide: "While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act." 871 IAC 24.32(8).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. There is no reason to believe that Michelle Janko lied when she was interviewed. Janko said she sent a text message to the claimant notifying him about the merger and expressed concern about the transition, this was after the merger was announced at Horizon. The claimant responded that she should stay optimistic and it could be better than she thought. He disclosed nothing confidential at that point.

As a result, no current act of work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated April 21, 2014, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

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